164-282

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~968~~. 493

THE UNITED STATES, APPELLANT,

vs.

JOHN C. DELANEY.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 18, 1896.

(16259.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 969.

THE UNITED STATES, APPELLANT,

vs.

JOHN C. DELANEY.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

JOHN C. DELANEY
v. No. 18348.
THE UNITED STATES.

I.—*Petition.*

The claimant filed his original petition April 6, 1894, and subsequently, to wit, June 18, 1894, he filed his amended petition by leave of court as a substitute for said original petition, which is as follows:

Amended petition.—Filed June 18, 1894.

FIRST CAUSE OF ACTION.

Your petitioner, John C. Delaney, for his first cause of action, respectfully represents:

I. That he is a citizen of the United States, and a resident of the State of Pennsylvania, and has always borne true allegiance to the Government of the United States.

II. That he was duly appointed receiver of public moneys at Oklahoma City, in the Territory of Oklahoma, by commission bearing date the 23d day of June, 1890, and duly qualified as such receiver by executing his bond and taking the oath of office on the 7th day of July following.

III. That on the 15th day of July, 1890, he entered upon the discharge of his official duties at Oklahoma City, as receiver of public
2 moneys, and continued in the discharge of the same until September 30, 1893, and thereby became entitled to receive the salary, fees, and commissions provided by law as the compensation of receivers of public moneys from the time he entered on the discharge of his duties as aforesaid.

IV. That from July 15, 1890, the date on which petitioner entered on the discharge of his duties at Oklahoma City, to September 1, 1890, the date on which the land office at said place was opened for the sale of public lands by executive proclamation, he was actively and continuously engaged in the discharge of official duties as receiver of public moneys, pursuant to instructions from the Secretary of the Interior and the Commissioner of the General Land Office.

V. That from July 15, 1890, to June 30, 1891, the total amount earned and lawfully due your petitioner for salary, fees, and commissions, within the limitation prescribed by the statute as to maximum compensation, was $2,885.87, and the fees and commissions collected and received during said period, and deposited in the Treasury of the United States by petitioner, were largely in excess of the maximum compensation provided by law. Part of said sum of $2,885.87—to wit, $2,494.60—has been allowed and paid to petitioner, but payment of the balance of $391.27 is refused by the Commissioner of the General Land Office and the First Comptroller of the Treasury.

SECOND CAUSE OF ACTION.

Your petitioner, for his second cause of action, respectfully states:

3 I. That he adopts and makes a part of this statement of his second cause of action all the facts stated in and allegations of paragraphs I, II, III, and IV of his first cause of action herein.

II. That while acting as receiver of public moneys as aforesaid, in the performance of his official duties, he was required to make good the fees in contested land cases from time to time, which fees amounted in the aggregate to sixty-eight dollars ($68.00), and for which he has not been allowed or paid any part in the settlement of his accounts by the Commissioner of the General Land Office and the First Comptroller of the Treasury, and for which sum he is entitled under the law to be reimbursed.

THIRD CAUSE OF ACTION.

I. For his third cause of action your petitioner adopts and makes a part of this statement of his third cause of action all the facts stated in and allegations of paragraphs I, II, III, and IV of his first cause of action herein.

II. And your petitioner further shows that while acting as receiver of public moneys as aforesaid, to wit, at the city of Oklahoma, in the Territory of Oklahoma, on the night of the 28th day of September, 1890, the Government safe of and in his said office, which contained moneys of the United States received by him as such receiver, was blown open by burglars, and all the moneys therein were robbed and taken therefrom, and that the moneys of the United States, being the receipts of said land office, then deposited in said safe, in the sum of one hundred and thirty-eight dollars and twenty-seven cents ($138.27), were then and there so stolen, robbed, and taken away; that in depositing said money in said safe your petitioner exercised the care of a prudent business man

4 in and about his own business affairs of importance, and that after the taking thereof as aforesaid he demanded that his account should be credited for the amount of the said loss of one hundred and thirty-eight dollars and twenty-seven cents, which was refused by the accounting officers of the Government.

Your petitioner further shows that no assignment or transfer of the aforesaid claims, or of any part thereof, or interest therein, has been made by him, and that he is the sole owner thereof.

Wherefore your petitioner prays judgment against the defendant for five hundred and ninety-seven dollars and fifty-four cents ($597.54).

DUDLEY & MICHENER,
Attorneys for Claimant.

CHANEY & RANNELLS,
Counsel.

STATE OF PENNSYLVANIA,
County of Dauphin, ss:

Before me, a notary public, in and for the county of Dauphin and State of Pennsylvania, personally appeared John C. Delaney, who, being

duly sworn, deposes and says that he is the petitioner named in the foregoing petition, and that the facts stated therein are true to the best of his knowledge and belief.

JOHN C. DELANEY.

Subscribed and sworn to before me this 16th day of June, A. D. 1894.

[SEAL.] WM. C. ARMOR, *Notary Public.*

5 II.—*Traverse.*—*Filed November 14, 1895.*

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

J. E. DODGE,
Assistant Attorney-General.

6 III.—*Findings of fact and conclusion of law.*—*Filed December 16, 1895.*

FINDINGS OF FACT.

This case having been heard by the Court of Claims, the court upon the evidence finds the facts as follows:

I.

The claimant, John C. Delaney, a citizen of the United States and a resident of the State of Pennsylvania, was duly appointed and commissioned as receiver of public moneys at Oklahoma City, in the Territory of Oklahoma, on June 23, 1890, and on July 7, 1890, he qualified by taking the oath of office and giving the bond required by law.

II.

The United States land office at said Oklahoma City was established by executive order of the President on June 6, 1890.

III.

The claimant left his home in Harrisburg, Pennsylvania, on July 15, 1890, and proceeded to Oklahoma City, and on July 18, 1890, he entered upon his official duties as receiver of public moneys at that place, as is shown by the correspondence and facts set forth in the 5th and 6th findings, and continued in the discharge of the same until the termination of his services September 30, 1893.

IV.

That from July 15, 1890, to June 30, 1891, the close of the fiscal year, the pro rata compensation of claimant, from salary, fees, and commissions, at the maximum rate of $3,000 per annum, as fixed by law, amounting to $2,885.87, and the fees and commissions earned by claimant from September 1, 1890, when the land office at Oklahoma City was opened for the sale of public lands, to June 30, 1891, exceeded said pro rata of maximum compensation by $832.31. The First Comptroller of the Treasury allowed and paid to claimant compensation only from September 1, 1890, amounting to $2,494.60, and refused to allow or pay the balance claimed, which amounts to $391.27, no part of which has been paid.

7 V.

The following letters were addressed to and received by claimant after his arrival in the Territory of Oklahoma:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 18, 1890.

REGISTER AND RECEIVER,
Oklahoma City, Oklahoma T'y.

SIRS: I enclose herewith copy of Public Notice No. 940, for the establishment of an additional land district in the Territory of Oklahoma, and the location of the office thereof. Other copies of this notice are sent you with suggestion that one or more be mailed to each post-office in your district, to be conspicuously posted for the information of the public.

The officers at Guthrie and Kingfisher have been directed to turn over to you all the plats and records of every description relating to the lands forming your district, and you will at once confer with them upon this subject.

As soon as the records are received you will proceed to give notice by publication, as an advertisement, at regular advertising rates, in the newspaper having the largest circulation in your district, once a week for four weeks, of the precise date when your office will be open for the transaction of public business, and when the officers at Guthrie and Kingfisher will cease to transact business relating to the lands transferred.

Full supplies of blanks and stationery will be sent you from this office, and a safe, three desks, letterpress stand, and chairs will also be sent.

You will submit a requisition with estimates, specific and in detail, for any other articles of furniture and cases that may be required, giving exact cost, when authority will be given for such expenditures as may be deemed necessary.

In this connection I desire to inform you that no expense whatever must be incurred without the authority of this office being first obtained.

If practicable, an inspector or agent will be sent to assist in the opening of your office, and further instructions will be sent you as to your duties.

The receiver as disbursing agent will defray the expense of publication of notice herein ordered, and transportation of records from Guthrie and

Kingfisher, if there be any such expense, referring on his certified vouchers to this letter by its initial and date as his authority therefor.

Please acknowledge promptly the receipt of these instructions, and report promptly the date fixed for the opening of your office.

Very respectfully,

LEWIS A. GROFF, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 23, 1890.

REGISTER AND RECEIVER,
Oklahoma, Oklahoma Ty.

GENTLEMEN: The local officers at Guthrie and Kingfisher have been intrusted [sic] to transmit to your office, upon the closing of business in their offices as to the lands in your district, tract books containing all the entries and filings for lands in your district, together with a list of all the homestead entries and soldiers' homestead declaratory statements filed on said lands since they were opened to entry, with the cancellations or consummations of entries that may have occurred since that date.

You will post in said tract books from day to day such filings or entries as may be allowed, posting the entries in ink and the declaratory statements in pencil.

In numbering filings and entries allowed at your office, begin with No. 1 in each class, and number consecutively therein.

I inclose herewith a copy of a letter of this date to the register and receiver at Guthrie, which will doubtless give you further information in the matter. A similar letter has been sent to the Kingfisher office.

Acknowledge receipt hereof, and of the records from the offices at Guthrie and Kingfisher.

Very respectfully, LEWIS A. GROFF, *Commissioner.*

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DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 1, 1890.

MR. JOHN C. DELANEY,
Receiver, &c., Oklahoma, Oklahoma.

SIR: I enclose herewith letter of the Honorable Secretary of the Interior, dated 31st ultimo, designating you as a special disbursing agent and requiring you to bond as such officer in the penal sum of $5,000.

Blank bonds, instructions, &c., are herewith enclosed. Please give the matter prompt attention.

Very respectfully, LEWIS A. GROFF, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 4, 1890.

REGISTER AND RECEIVER, U. S. LAND OFFICE,
Oklahoma, Oklahoma Territory.

SIRS: I have this day directed that you be furnished with a supply of stationery, blank books, and forms, together with copies of Land Deci-

sions, U. S. Statutes, copy of the Revised Statutes, &c., the receipt of which you will please acknowledge.

Further supplies, blank books, and stationery may be had upon application to this office.

Very respectfully, LEWIS A. GROFF, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 14, 1890.

RECEIVER UNITED STATES LAND OFFICE,
Oklahoma City, Oklahoma.

SIR: The Honorable Secretary of the Treasury has designated the First National Bank of Arkansas City, Kansas, in which to deposit to the credit of the Treasurer of the United States the receipts of your office.

You will transmit your receipts by Wells-Fargo Express Company to the bank, and will include in your estimates to this office the amount necessary for the payment of charges of such remittances.

Very respectfully,

W. M. STONE, *Assistant Commissioner.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 15, 1890.

REGISTER AND RECEIVER,
Oklahoma City, Oklahoma.

GENTLEMEN: Referring to the receiver's letter of the 6th instant in relation to freight on safe, you are informed that the contracts call for the delivery of the safe and the office furniture at the railroad station nearest your office, and no freight charges should be paid by you.

The expenses attendant upon the removal of the safe and furniture from the station to your office will be paid by the receiver as disbursing agent, who will, upon his certified vouchers, refer to this letter by its initial and date as his authority therefor.

You should submit a specific and detailed estimate of the cost of such additional furniture, cases, &c., as may be required, bearing in mind that the appropriation will not admit of any extravagant outlay, and the articles should be of an inexpensive character, so far as possible.

An inspector will be sent to assist in opening your office, and he will report as to clerical assistance necessary.

Very respectfully,

LEWIS A. GROFF, *Commissioner.*

9 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 25, 1890.

REGISTER AND RECEIVER,
Oklahoma City, Oklahoma T'y.

SIRS: Referring to the letter of the register of the 22nd instant, calling attention to the clerical force in your office, you are advised that at the present time there are no funds available. The sundry civil bill has

not as yet been passed. As your office does not open until the 1st proximo, you will be advised before that date as to the employment of a clerk.

Very respectfully,

LEWIS A. GROFF, *Commissioner.*

VI.

Claimant was directed verbally by the Commissioner of the General Land Office on the 10th of July to go to Oklahoma as speedily as possible to make the necessary preparations to open the office. He left Harrisburg, Pa., on the 15th of July, 1890, and arrived at Oklahoma City on the 18th. The nature of the service performed by claimant after his arrival and before the 1st of September is as follows: Conferring with the officers of other districts in the Territory from which his district was formed, to determine what date to open the office; preparing and issuing thirty days' notice of the day fixed for opening the office; overseeing and superintending preparation of rooms for office; getting estimates for the manufacture of cases for office; superintending the construction of fixtures and having them put into office; giving information and receiving instructions from the inspector; attending to the transfer of the records from the other offices of the Territory to that of the Oklahoma office. During said time there was a continuous arrival of letters from different parts of the district, as well as letters from the Department, which required the attention of claimant up to the 1st of September, 1890.

CONCLUSION OF LAW.

Upon the foregoing facts the court decides as a conclusion of law that the claimant is entitled to recover the sum of $366, being an allowance for fees and salary from July 18th to Sept. 1st, 1890.

IV.—*Opinion of the court.*

WELDON, J., delivered the opinion of the court:

The petition embraces three causes of action—first, a claim for fees as receiver of public moneys at Oklahoma, in the Territory of Oklahoma, earned between the 15th of July, 1890, and the 1st of September, 1890; second, fees "which he (claimant) was required to make good in contested land cases from time to time, which amounted in the aggregate to sixty-eight dollars, and for which he has not been allowed or paid any part in the settlement of accounts;" third, as alleged in this petition, that, "to wit, on the 28th of September, 1890, at the city of Oklahoma, the Government safe of the receiver of public moneys and in his office, which contained moneys of the United States received by him as receiver, was blown open by burglars and all the moneys therein were robbed and taken therefrom, and that the moneys of the United States, being the receipts of said land office there deposited in said safe in the sum of $138.27, were then and there stolen and robbed, and that in depositing said sum your petitioner exercised the care of a prudent business man in and about his own business affairs; that after the taking he demanded that his accounts should be credited for the amount of the said loss, which was refused by the accounting officers of the Government."

The serious contention arises on the claim for salary and fees earned from the 15th of July, 1890, the date on which claimant left the State of Pennsylvania and the first day of September, 1890.

The land office of which he was receiver was opened for the transaction of business on the first day of September, 1890, pursuant to a notice given by the register and receiver thirty days prior to said time.

The notice and order of the General Land Office establishing an office at said place was made on the 11th of June, 1890, in which it is stated: "Further notice of the precise date when the office at Oklahoma will be opened for the transaction of public business will be given by the register and receiver of the district by publication."

The claimant left his home in Pennsylvania and arrived at Oklahoma on the 18th day of July, and from that time, it is insisted, he commenced his services as receiver, and not from the 1st of September, when the office was opened for the location and sale of land. The defendants insist that his term of service commenced when the office was opened for the entry and sale of land, and from that time they have allowed his compensation.

The Commissioner of the General Land Office construed the law in favor of the claimant's right to compensation from the time he arrived at Oklahoma and entered upon the discharge of the preliminary service incident to the opening of the office; but in that construction the Comptroller did not concur, and the result was that in the settlement of the accounts the compensation was allowed from the 1st of September. On the 18th day of July, that being about the time the claimant arrived at the post of duty, he received a communication from the Commissioner of the General Land Office, in which was enclosed the notice of the establishment of the office at Oklahoma City; the letter in general terms defined certain services to be performed by the claimant before the opening of the office for the entry and sale of land, and in pursuance of that letter the claimant commenced the performance of certain services preliminary to the opening of the office on the 1st day of September following.

It is shown in Finding VI that on the 10th of July the claimant was verbally directed by the Commissioner of the General Land Office to go to Oklahoma as speedily as possible and make the necessary arrangements to open the office. He left his home on the 15th, and arrived at Oklahoma City on the 18th of July, and from that time until the 1st of September he was engaged in conferring with the officers of other districts as to the date of opening the office at Oklahoma; fixing and determining the date when the office should be opened; preparing and issuing thirty days' notice of the opening of the office; overseeing and superintending the preparation of rooms for the office; renting an office; ordering and putting in fixtures; giving information to and receiving instructions from the inspector; attending to the transfer of the records from other offices of the Territory to the Oklahoma office; receiving and replying to letters from the different parts of the district on public business, and in receiving and replying to letters from the Department.

11 The letter of the 18th of July, giving instructions as to the duty of the claimant in a general way, shows what he was expected to do by the Department, and the acts of the claimant show what he did as preliminary to the discharge of his specific duties commencing on the 1st of September.

In the able argument and brief of the counsel for the defendants it is contended that section 2243 of the Revised Statutes limits the compensation of claimant to the time when the office was actually opened for the sale of lands, and that the time from the 15th or 18th of July preceding such opening cannot be computed in the allowance of fees and salary. There was no controversy between the parties as to the amount, and the only question is, as to what is claimant's legal right to compensation from the time he entered upon the discharge of his alleged services and the opening of the office. Section 2243 provides "The compensation of registers and receivers, both for salary and commissions, shall commence and be calculated from the time they, respectively, enter upon the discharge of their duties."

The defendants construe the statute in the specification of duties as applicable to a time when the receiver could by the condition of the office earn commissions arising from the entry and sale of land, and that the right to a salary is commensurate in time to the right to commissions. Counsel for the defendants cite section 2234, Revised Statutes, providing for the appointing of a register and receiver; section 2235, providing for the residence of the register and receiver at the place of the land office; section 2237, providing for a salary; and section 2238, providing fees and commissions, as tending to strengthen the theory of their contention. We do not regard these sections as tending to a construction in favor of the theory of the defendants; they are applicable to subjects which do not affect the question when the official duty of a receiver may commence, except the section providing for a residence; but that question does not arise in this case except as to the time from the 15th of July, when claimant left his place of residence, and the time when he arrived at the place of the location of the office—a period of about three days.

Whatever may be said of the abstract legal right of the plaintiff to recover compensation for the time intervening between the 18th of July and the 1st of September, he certainly performed meritorious and important service preparatory to the opening of the office on the 1st of September. They were services which had to be performed by some person, as without their performance the office could not have been opened on the 1st of September or at any other time. Some of the service could have been performed by any person having the physical ability, as, for instance, the arrangement of the office and attending to the transfer of the records from other offices. These duties involve simply physical service, but not so with the other service embraced in Finding VI. No person but the receiver and register could have given the notice under the order of the Commissioner of the General Land Office; no person but the claimant could have given the information to the inspector upon which the inspector could have based his instructions to claimant; the letters
12 which he received on public business and his correspondence with the Department were services peculiar to himself, grew out of his official character, and were dependent for their performance upon his official relation with the duties of receiver.

The statute requires him to reside at the place of the office; in legal contemplation the office as a place for the discharge of public business was by the act of the President established at Oklahoma, and to that

place he repaired on the 15th of July and remained in the performance of the service enumerated in Finding VI until the opening of the office on the 1st of September.

The preliminary services from their very nature were necessary, and had to be performed by some person antecedent to the performance of the undoubted duties of the claimant, to wit, "of receiving public moneys." Is it certain that giving information to the inspector and receiving instructions are no part of his duties as receiver? It is true the law presumes that every person upon his appointment is substantially competent to discharge the duties of his office, but that applies more particularly to the general duties; there may be details in the business of the office that require special instruction, so that the mere routine of business may become familiar to the incumbent. The land office, from the character of its business and the fact that instructions are given by an inspector, may be assumed to be a position which requires special information and direction preparatory to the successful discharge of its more important duties.

We have not been able to find a statute making it the special duty of any particular officer connected with the Land Department to perform the service indicated in the finding. In the appropriation act of July 11, 1890, there is a provision "For per diem in lieu of subsistence of inspectors, of clerks detailed to investigate fraudulent land entries, trespass upon the public lands, and cases of official misconduct, and also clerks detailed to examine the books of and assist in opening new land offices while traveling on duty at a rate to be fixed by the Secretary of the Interior, not exceeding three dollars per day, and for actual necessary expenses of transportation, ten thousand dollars." (26 Stat. L., 257.) It will be seen by the terms of this statute that the clerks are "to assist in opening new land offices," but are not made the exclusive persons who perform that duty. It does not appear that a clerk assisted in the opening of the office at Oklahoma; but if such assistance was rendered it would not be to the exclusion of the agency and service of the claimant.

In a matter involving the question as to when the pay of a public officer commences, to wit, marshal of a consular court at Shanghai, was referred by the State Department to the Attorney-General, who said in reply:

"And, except where it is so directed by statute, I do not think that the salary of a public officer whose duties require him to leave the country should be withheld until he reaches the field of service. Every person appointed to an office of that kind has preliminary duties to perform before he leaves the country, and, after he has taken the official obligation in the manner prescribed by law, as by making oath and giving bond, the time and labor devoted to those preliminary duties, as well as the time occupied in reaching his official post, are just as much spent in the public service as though he were already at that post exercising its more immediate functions."

It has been held by this court in the case of Moore (4 C. Cls., 314):

"In the construction of statutes which fix the compensation of pub-
13 lic officers the rule of interpretation as held by the courts is that when the words of the statute are loose and obscure and admit of two meanings they should be construed in favor of the officer." Without assuming that the statute comes within the definition of the decision,

it may be said that in this matter the officers of the Interior Department and the officers of the Treasury Department differed most radically on the question of the claimant's right to recover.

The statute does not specifically define the duties of a receiver; but it must be assumed that his general and most important duties do not commence until the opening of the office, when land is subject to entry and sale. The statute evidently intended to prevent the payment of salary and the consequent right of fees until he entered upon the discharge of some duty, which would prevent the right of pay founded upon the mere legal right in the office of receiver. Salaried officers are as a general proposition entitled to pay as an incident to the right of office, which becomes consummate as soon as they are commissioned as such and perform whatever conditions the law requires before induction into office. The law can not measure the importance and value of service or the performance of duty, and while what the claimant did before the 1st of September measured by the importance of what he did afterwards is rather unsubstantial, yet if it constituted official duty its performance entitles him to recover. The Commissioner and the claimant were acting upon the theory that from the 18th of July to the 1st of September he was engaged in the discharge of duties incident to his office as receiver. Construing the statute as including the performance of duties which may be performed as incident to and necessary to the opening of the office for the transaction of public business, the court holds that the claimant is entitled to date the commencement of the performance of his duties from the 18th of July and not the 1st of September.

As to the other alleged causes of action, there is no right of recovery on the facts. There can be no recovery against the United States for the loss of money by ordinary theft and robbery against the liability of a party on his bond to faithfully account to the United States. The claimant is entitled to recover the sum of $366.00 as salary and fees for the time from July 18th to September 1, 1890, and for that amount a judgment is ordered.

14 V.—*Judgment of the court.*

At a Court of Claims held in the city of Washington on the 16th day of December, A. D. 1895, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, John C. Delaney, do have and recover of and from the United States the sum of three hundred and sixty-six dollars ($366).

BY THE COURT.

15 VI.—*Application for and allowance of appeal.*

JOHN C. DELANEY)
vs.) 18348.
THE UNITED STATES.)

From the judgment rendered in the above-entitled cause on the 16th day of December, 1895, in favor of claimant, the defendants, by their

Attorney-General, on the 8th day of February, 1896, make application for and give notice of an appeal to the Supreme Court of the United States.

J. E. DODGE,
Asst. Attorney-General.

Filed February 8, 1896.
Allowed in open court April 7, 1896.

WILLIAM A. RICHARDSON,
Chief Justice.

16 In the Court of Claims.

JOHN C. DELANEY
vs.
THE UNITED STATES. } No. 18348.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 15th day of April, A. D. 1896.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Case No. 16259. Term No., 969. The United States, appellant, vs. John C. Delaney. Court of Claims. Filed April 18, 1896.

164-282

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANTS, v. JOHN C. DELANEY. } No. 493.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE APPELLANTS.

JOSHUA ERIC DODGE,
Assistant Attorney-General.
GEORGE H. GORMAN,
Assistant Attorney.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANTS, v. JOHN C. DELANEY. No. 493.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE APPELLANTS.

STATEMENT.

The appellee, who was receiver of public moneys at the local land office at Oklahoma, Okla., brought suit in the court below for certain sums alleged to be due to him from appellants for official compensation. The court below gave judgment in favor of the appellants on the second and third causes of action set up in appellee's petition (Rec., pp. 2 and 11), and, inasmuch as the appellee has not appealed therefrom, the issues therein presented are in no wise involved in this appeal.

On the first cause of action set up in the appellee's petition (Rec., p. 1), the court below gave judgment in favor of the appellee, from which the appellants have taken this appeal. On June 6, 1890, the President ordered that a new land district made up of parts of two old districts be constituted, the office to be at Oklahoma, "notice of the precise date when the office will be opened for transaction of public business to be given by the register and receiver by publication." On June 23, 1890, claimant, resident in Pennsylvania, was appointed *receiver;* July 7th he took oath and gave official bond. On July 15th, pursuant to verbal instructions from the Commissioner of the General Land Office, he started for Oklahoma for the purpose of making necessary preparations to open the new office; he arrived in Oklahoma on the 18th of July, 1890, from which time up to September 1, 1890, the date at which the Oklahoma land office was opened for the transaction of business, he was engaged in conferring with officers of other land districts with a view of becoming familiar with the duties of his office, conferring concerning the selection of office room and furniture, receiving instructions from the General Land Office at Washington, and generally getting ready to open the office on September 1, in obedience to the proclamation of the President. The office was opened for business September 1, 1890, at which date sales at old offices ceased and books were transferred. (Findings I, II, III, V, and VI, pp. 3 to 7, Rec.)

The court below held that appellee entered on his duties as receiver when he arrived at Oklahoma, and

rendered judgment in his favor at the rate of his salary and commission compensation from July 18 to September 1, 1890.

SPECIFICATION OF ERRORS.

I. The court erred in holding that the services performed by the appellee from the 18th of July to September 1, 1890, were part of his official duties within the meaning of section 2242, Revised Statutes.

II. The court erred in giving judgment in favor of the appellee and against the appellants in the sum of $366, or in any sum.

ARGUMENT.

At the very threshold of this discussion it is necessary that we bear in mind that the appellee's right to the compensation which he seeks is founded solely and entirely upon the provisions of section 2243 of the Revised Statutes. And it is all the more necessary that this crucial fact should never be lost sight of, inasmuch as it is evident that the judgment of the learned judge who delivered the opinion in the court below was influenced by "equitable" considerations for "meritorious services," though not covered by the statute which governs the payment for official duties, as will be presently shown.

Section 2243, Revised Statutes, is as follows:

> The compensation of registers and receivers, both for salary and commissions, shall commence and be calculated from the time they respectively enter on the discharge of their duties.

The time when these officials enter upon the discharge of their duties and what is an entering upon the discharge of such duties is the question to be determined.

The time when the pay of an official commences is always a question of law. In most cases he is entitled to a salary and other emoluments when he has been duly sworn into office. In the case of officials who are obliged to give bond, giving the bond is a condition precedent to the right to collect and have paid the salary. In other cases and under similar statutes, in fact under most statutes, the officer must have taken the oath, given bond, where one is required, and entered upon the discharge of his duties before he is entitled to compensation. In the case under consideration, however, there is a statute specially made for registers and receivers. Their compensation, both for salaries and commissions, shall not commence until they enter upon the discharge of their duty. The fact should be noted that their "salaries and commissions" commence at the same time. We suppose it would not be contended by anyone that the commissions can be allowed or collected until work is done upon which commissions can be lawfully charged; therefore if the salary and commissions can not commence until work is done upon which commissions can be charged, it follows that the salary can not commence until these officials absolutely enter upon the discharge of the duties of their office—not in form, not in theory, but in fact.

It would be unsafe to hold that a register or receiver was discharging the duties of his office prior to the time that his office was established, although he might be advising with "officers of other districts," learning something

of the methods of business, seeking to rent an office, to purchase furniture, or looking after blanks and stationery and the like. These are no part of his official duties, however convenient they may be and however instructive to the official himself. His official duties are acts performed in and about the business of his office, and not in and about business collateral remotely or conveniently connected with or attached to it. The statute itself, in our judgment, is so plain and is so absolute in its requirements that a discussion of the act sheds but little light upon the question. It presents one of those instances where the statute is so plain as to require no interpretation, and where any departure from its plainly expressed terms is an exercise of legislative rather than judicial functions.

Section 2234, Revised Statutes, directs the appointment of a register and a receiver "for each land district established by law," and section 2235 says, "They shall reside at the place where the land office for which he is appointed is directed by law to be kept," thus clearly locating and designating where their duties are to be discharged or performed, for which section 2237 says they shall receive a salary of $500 per annum, and section 2238 provides that they shall also receive certain fees and commissions for the performance of certain duties, and for receiving certain moneys for the disposal and sale of the public lands. It is for the discharge of these specified duties that they are to receive the above salary, fees, and commissions, which are limited by section 2240 to $3,000 a year, and a pro rata, not to exceed that rate, for any one quarter or fraction of a quarter. Then a further qualification and limitation on their right to receive this

compensation was imposed by section 3 of the act of February 24, 1855 (vol. 10, p. 615), which reads, "And in all cases hereafter the salaries of land officers shall commence only from the time they enter on the discharge of their duties," and the same limitation, slightly changed in phraseology, in act of February 2, 1859 (vol. 11, p. 378), which is the same as appears in section 2243, Revised Statutes, "the compensation of registers and receivers, both for salary and commissions, shall commence and be calculated from the time they respectively enter on the discharge of their duties."

The significance of these words is made perfectly plain and unambiguous by a glance at the acts by which they came into statutory existence. The act of February 24, 1855, was passed establishing certain new districts out of what was then known as the Willow River district, and section 3 of the act provided:

> *And be it further enacted*, That the sales shall continue at the Willow River district till the land officers for that district are notified that the officers for the district created by this act are *prepared to enter on their duties;* and in all cases hereafter the salaries of land officers shall commence only from the time they enter on the discharge of their duties. (10 Stat., p. 615.)

Compare this with the phraseology of section 2222 of the Revised Statutes:

> Every surveyor-general, register, and receiver * * * is authorized to continue in the uninterrupted discharge of his regular official duties after the day of expiration of his commission and until a

new commission is issued to him for the same office, or until the day when a successor *enters upon the duties of the office.*

This section was enacted in 1853. (10 Stat., p. 152.) It is therefore perfectly obvious that the new officer "enters on the discharge of his duties" at the same time that the officers for the old Willow River district were to cease selling lands and at the same time that an outgoing officer under section 2222 ceases to exercise the functions of the office.

The fact that a newly created office, or even at an old office, a new receiver or register has been appointed, has taken his oath, given bond, and has entered upon some preparatory work, whether in the way of traveling to his new post, or of qualifying himself by correspondence, study or otherwise, to perform its duties, does not bring him within the carefully restrictive words of section 2243. He has not entered upon the discharge of his duties obviously, because during such time the officers at the old district are continuing their sales and the exercise of their duties. It appears that in the case of the claimant, the officers at Kingfisher and Guthrie were continuing the sales up to the 1st day of September, when they were notified that the Oklahoma office was to be ready to open for business, just as at Willow River under the act of 1855, the sales were to continue until the new office was ready to enter upon that business, and then, and not till then, were the officers at the new office prepared to enter upon their duties, so that the sales should stop at Willow River, nor so that their compensation could commence.

It seems clear that this section 3 of the act of 1855 (now section 2243) was enacted to exclude the period devoted to preparations for opening new offices. The act of 1855 related to the establishment of new offices. Section 3 of that act was framed to exclude from compensation some period after the new officers had been duly appointed and qualified; it could have had no other purpose, and to what other period could it have applied than to that prior to the actual opening of the new office for sale of land? Then only could the new officers give notice of their readiness "to enter upon their duties" so as to justify cessation of sales at the old office under section 3 of the act of 1855.

The court below, however, instead of strictly confining itself to a consideration of the appellee's rights under the statute, has allowed itself to be influenced by the fact that the appellee performed "meritorious" services for the Government for six weeks for which he had not been paid. The court say (Rec., p. 9):

> Whatever may be said of the abstract legal right of the plaintiff to recover compensation for the time intervening between the 18th of July and the 1st of September, he certainly performed meritorious and important services preparatory to the opening of the office.

And because of these "meritorious and important services," rendered prior to the time that he entered upon the discharge of his *official* duties, the court proceeds to pay him for them *as if they were official duties*, although seemingly admitting that he had no "abstract legal right" to the money.

This indicium of the court's leaning is further to be observed in Findings IV, V, and VI, which are framed for the purpose of showing that the appellee went to Oklahoma and performed the services in question at the direction of the Commissioner of the General Land Office. It is further to be seen in the opinion of the Attorney-General which is quoted in the opinion of the court (Rec., p. 10, bottom), which relates, however, to officers whose compensation is subject to no such restrictive words as those in section 2243 under discussion.

Now, we submit, with all deference, that this "abstract legal right"—the right under the provisions of the statute—is all with which the court had to do, and is the only ground upon which a judgment can be rested in this case.

What matters it if the appellee did perform "meritorious services" for the United States, if they were not within the period for which he was to be paid under his contract of employment, as set out in Revised Statutes, 2243? Every man is conclusively presumed to know the law; and when the appellee went to Oklahoma prior to the opening of the land office and performed the service set out in Finding VI, he knew that under his contract of employment his compensation and commissions *as receiver* were not to begin until he began the discharge of his official duties; and, as a man of common sense, he also knew that he could earn no commissions until he sold land, and that he could sell no land until September 1, when the land office was to be opened.

He is as much presumed to know this as Waples (110 U. S., 630) was presumed to know the law on confisca-

tion sales, where the Government sold land which did not belong to the offender, and this court, on Waples's eviction, refused to refund him his purchase money.

These preliminary "services" that are alluded to by the court were, in fact, of as much benefit to the appellee as the Government, in that they prepared and fitted him for the discharge of the duties of his office on September 1. But, even if these "meritorious services" were such as to raise a moral obligation on the part of the Government to pay for them, the appellee must seek his redress from the Congress, for, as was said by this court in *Smoot's Case* (15 Wall., 36–45):

> It would be very dangerous indeed to the best interests of the Government—it would probably lead to the speedy abolition of the Court of Claims itself—if, adopting the views so eloquently urged by counsel, that court or this should depart from the plain rule laid down above and render decrees on the crude notions of the judges of what is or would be morally right between the Government and the individual.

Again, what matters it if the Commissioner of the General Land Office did verbally direct the appellee to go to Oklahoma and perform these services? That action could not change the law, nor could that officer by any contract or promise, express or implied, bind the United States other than by the statute for such case made and provided. Such was the point in *Stanley's Case* (8 Wall., 33), where the Secretary of the Treasury employed a man to go to Europe on business for the Government, promising him a certain compensation in addition to his regular pay as a clerk in the Department. After the

services had been performed the Secretary was unable to pay him the sum promised for want of available funds, and upon suit being brought this court denied him recovery, saying that the employment and promised compensation was without authority in law and therefore void.

The quotation from the Attorney-General which the court makes (Rec., p. 10, bottom), in its opinion is clearly shown to be inapplicable by the first sentence—"except where it is so directed by statute." That is just this case. The statute directs that the salary and commissions shall commence and be calculated from the time they enter upon their duties. And inasmuch as it is impossible to pay commissions for the sale of a thing until that thing has been sold, it follows that the salaries and commissions can not, at the very best, commence at any date earlier than the lawful opening of the office when the officers are prepared to sell the land and receive the money therefor, which alone constitute their duties.

We submit that the judgment of the court below is erroneous, and that the same should be reversed with instructions to dismiss the petition.

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Assistant Attorney.

Office Supreme Court, U. S.
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CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, Appellants,

vs.

JOHN C. DELANEY, Appellee.

No. 493

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

W. W. DUDLEY,
L. T. MICHENER,
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J. R. GARRISON,
Attorneys for Appellee.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

The United States, Appellants.
v.
John C. Delaney, Appellee. } No. 493.

APPEAL FROM THE COURT OF CLAIMS.

Brief for Appellee.

It is manifest that section 2243, and not section 2242, of the Revised Statutes, is the section to which counsel for appellants intended to cite. Section 2242 refers to the collection of illegal fees by the register or receiver of a land office, and provides a penalty therefor, but has no relation whatever to his official duties.

Section 2243, Revised Statutes, is as follows:

"The compensation of registers and receivers, both for salary and commissions, shall commence and be calculated from the time they respectively enter on the discharge of their duties."

It will be observed that this section does not prescribe or define the nature or character of the duties upon which the officers named shall enter before their respective compensations shall commence. The original enactments (from which said section was taken) do not define or explain the nature and character of such duties.

The act of February 24, 1855 (10 Stats. 615), created an additional land district in Wisconsin, out of the Willow River Land district, to be located at Fond du Lac and to be known as the Fond du Lac district, and in section 3, it provided as follows:

"That the sales shall continue at the Willow River district till the land officers for that district are notified that the officers for the district created by this act are prepared to enter on their duties; and in all cases hereafter the salaries of land officers shall commence only from the time they enter on the discharge of their duties."

The act of February 2, 1859 (11 Stats. 278), is as follows:

"That the act, entitled 'An act for changing the compensation of receivers and registers of the land offices,' approved April twentieth, eighteen hundred and eighteen, shall be so construed by the proper accounting officers of the government as to restrict the aggregate amount allowed as compensation for the register's and receiver's commissions on moneys received at any land office in any one calendar year, to the sum of twenty-five hundred dollars each; and that the registers and receivers shall not receive for any one quarter or fractional quarter more than a pro rata allowance of said maximum of twenty-five hundred dollars. Their compensation, both for salary and commissions, to commence and be calculated from the time they enter on the discharge of their duties."

These enactments do not, either expressly or impliedly, point out or define the nature or character of the duties upon which registers and receivers of land offices shall enter upon before their compensation can commence, nor were they enacted for any such purpose. The object and purpose of these enactments (now carried into section 2243, Revised Statutes) were to limit and restrict the compensation of registers and receivers, which had theretofore been allowed from the

date of appointment, and were not limited to a *pro rata* allowance of the maximum compensation for the time actually employed. This is made apparent by reference to the decisions as to the compensation of registers and receivers under the act of April 20, 1818, which were rendered by the courts prior to said acts of February 24, 1855, and February 2, 1859, already cited. In *United States* v. *Edwards*, 1 McLean, 467, the court (at page 469), referring to the compensation of registers and receivers under the act of 1818, said: "The commissions depend, not on the time of service, but on the amount of moneys received," and (at page 470) "the year of the new receiver commences from the date of his appointment." And in *United States* v. *Dickson*, 15 Peters, 141, decided at the January term, 1841, the court held that: "Under the act of April 20, 1818 (3 Stats. at Large 466), a receiver of public moneys is entitled to calculate his commissions on public moneys received by him during the year commencing with the date of his commission, and not during the calendar or fiscal year; and he may retain not exceeding $2,500 for the fraction of a year when he goes out of office."

Following the restrictions and limitations imposed by the acts of February 24, 1855, section 3, and the act of February 2, 1859, above cited, came the provision contained in section 6, act of May 30, 1862 (12 Stats. 409), as follows: "That from and after the first day of July next the compensation of registers and receivers in all the land offices of the United States shall be an annual salary of five hundred dollars with the fees and commissions now prescribed by law." Certain additional fees, specified in said section, were also allowed. By this enactment, the fiscal year was fixed as the year by which the salary, fees and commissions of registers and receivers should be calculated and computed, commencing with July 1, 1862.

Next followed the proviso contained in section 6, act of March 21, 1864 (13 Stats. 36), as follows:

"Provided, That the salary and fees allowed any register or receiver shall not exceed in the aggregate the sum of three thousand dollars per annum."

These provisions are embodied in sections 2240 and 2243, Revised Statutes, which are as follows:

"Sec. 2240. The compensation of registers and receivers, including salary, fees and commissions, shall in no case exceed in the aggregate three thousand dollars a year, each; and no register or receiver shall receive for any one quarter or fractional quarter more than a pro rata allowance of such maximum."

"Sec. 2243. The compensation of registers and receivers, both for salary and commissions shall commence and be calculated from the time they, respectively, enter on the discharge of their duties."

The most rigid examination and analysis of the several enactments referred to, and from which the sections 2240 and 2243 of the Revised Statutes were taken, will fail to disclose any definition of the duties upon which the register or the receiver shall enter before their respective salaries shall commence. No inference can be legitimately drawn from these enactments or from the sections of the Revised Statutes cited, or from any law relating to registers and receivers of land offices, in support of the proposition, that the duties of a register or receiver, begin only from and after the time that the land office, for which he is appointed, is opened for the sale of public lands. The duties of registers and receivers are not limited to the specific acts of receiving public moneys and registering public lands in a land office. There are other important duties incidental and necessary thereto, such as the appellee was required to perform, during the period between July 18, 1890 and September 1, 1890. This is especially the case where a new land office has been established. In such case, the register and receiver appointed for the newly established land office cannot begin at once with receiving public

moneys and registering public lands without any preliminary proceeding of business. Some of the essential preliminary duties which are required of them are as follows:

1. They must confer with the officers of other land districts from which their district is formed to determine upon a date for opening.

2. They must prepare and promulgate the required notice of thirty days to be given of the day fixed for opening.

3. They must learn something of the methods of doing business in the land office.

4. They must rent an office or rooms for office, get estimates for the necessary cases and other office furniture, procure the same, and have it brought in and set up.

5. They must receive their blanks and stationery, and arrange the same for the convenient and methodical despatch of business.

6. They must be in daily attendance at their office, to give information to the public, and receive instructions from the inspector, so that on the day fixed for opening they may be fully ready to transact business.

This necessary preliminary business is as essential as the actual receiving of moneys for the sale of public lands, and the registering of public lands when the time for the latter arrives. It cannot be denied that these duties are official in character. Most, if not all of them, are peculiar to the offices of register and receiver, growing out of their official character and relations, and are such as could not be properly or lawfully performed by other persons than the register and receiver.

It is argued that the appellee cannot be allowed or paid compensation prior to September 1, 1890, because the land office at Oklahoma City was not opened for the sale of public lands until that date, and no fees or commissions were earned and collected prior

thereto. This contention, while specious and plausible, has no warrant of law to support it, and is contrary to the long and well established practice governing the compensation of registers and receivers, which has been, and still is, followed by the accounting officers of the government.

Section 2237 of the Revised Statutes, provides that "Every register and receiver shall be allowed an annual salary of five hundred dollars."

Sections 2238 and 2239 prescribe the fees and commissions which registers and receivers shall be allowed in addition to their salaries.

Section 2240 limits the compensation of registers and receivers, including salary, fees and commissions, to three thousand dollars a year each; and to the *pro rata* allowance of such yearly maximum, for any one quarter or fractional quarter.

Section 2241 provides that the fees and commissions, received at any land office in excess of the maximum allowed by law to the register and receiver, shall be paid into the treasury, as other public moneys.

Section 2242 provides a penalty for charging or receiving illegal fees.

Section 2243 fixes the time from which "the compensation of registers and receivers, both for salary and commissions, shall commence and be calculated," as "the time they, respectively, enter on the discharge of their duties."

The limitation prescribed as to the maximum compensation of a register or receiver, including salary, fees and commissions, is "three thousand dollars a year each." By the act of May 30, 1862, Sec. 6 (12 Stats. 409) before cited, the fiscal year was fixed as the year by which the maximum compensation from salary, fees and commissions, should be computed and ascertained, beginning with July 1, 1862.

For the quarter of a year, or the fraction of a quarter, the compensation is limited to the pro rata of the maximum allowance of compensation for the year.

So that, if during the whole of any fiscal year, the fees and commissions received by the register and receiver, respectively, are sufficient, together with the salary of five hundred dollars, to reach or exceed the maximum of three thousand dollars, each will receive said amount. If the register or receiver is in discharge of his duties at the land office for a portion of the year only, he will receive the *pro rata* of the maximum compensation for such portion of the year, if the fees and commissions received during such period, together with the salary, are sufficient to make up such *pro rata* of the maximum compensation. The compensation for any particular quarter, or for any fraction of a quarter, is not dependent upon the fees and commissions received for that particular period, but upon the fees and commissions received during the entire fiscal year, or such portion thereof as the register or receiver may be in the discharge of his respective duties.

To illustrate, if the register or receiver has discharged the duties of his office for the entire fiscal year, and for six months of such year no fees or commissions are received, and during the other six months of such year the fees and commissions received are sufficient to pay the maximum compensation for the year, he would unquestionably be paid the maximum yearly compensation. No other rule is followed by the accounting officers.

If the contention of counsel for appellants be correct, that the appellee is not entitled to compensation prior to September 1, 1890, because the land office at Oklahoma City was not opened for the sale of public lands before that time, and therefore no fees or commissions were earned and received for any period prior to that date; then, on the same theory, the register and receiver of any land office must go uncompensated for any period of time during which no fees or commissions were earned and received, although they

may have in the discharge of official duties at such land office during such period, and during the entire fiscal year embracing such period, and the fees and commissions received during such fiscal year were sufficient to pay the maximum yearly compensation.

If the compensation of the register or receiver could be made dependent upon the fees collected for any particular period of time less than the fiscal year or part thereof, during which he was engaged in the discharge of the duties of his office, it would be necessary to determine whether the fees and commissions received on each particular day of the year were sufficient to pay the *pro rata* maximum compensation for such day, and any day on which no fees or commissions might be collected would necessarily be without compensation.

In *United States* v *Edwards* (1 McLean 467), in relation to the compensation of a receiver of public moneys, under the act of 1818, the court said: "The year of the new receiver commences from the date of his appointment. And suppose that he should not receive a dollar for the first six months of the year, but for the last six months should receive a sum which would give him the full limit of the commissions in any one year, could he not claim them?"

Subsequent legislation, hereinbefore referred to and cited, has limited the compensation of registers and receivers to commence, not from the date of appointment but from the time they respectively enter on the discharge of their duties, and the fiscal year has been fixed as the year in which the compensation is to be computed. But respecting the application of the fees and commissions to the payment of the compensation of the register and receiver, the doctrine laid down in *United States* v. *Edwards* (at page 470) remains unchanged.

The court below found, upon the evidence, that the appellee entered upon his official duties as receiver of

public moneys, in the land office at Oklahoma City, on July 18, 1890 (rec. p. 3). The nature of the specific duties which he performed, from that date up to September 1, 1890, were also found by the court, and are set forth in the record on page 7.

These duties the appellee was required to perform by direction of the Commissioner of the General Land Office (rec. pp. 4 to 7). Most, if not all, of said duties were peculiar to the office held by the appellee, growing out of his official character, and depending for their performance upon his official relation with the duties of receiver of public moneys (rec. p. 9). These duties were such as required his daily attendance, in the land office at Oklahoma City, from July 18, 1890 to September 1, 1890, when the office was opened for the sale of public lands (rec. p. 7).

If these duties were not official duties performed by the appellee in and about the business of his office, as receiver of public moneys for the land office in Oklahoma City and directly connected therewith, the question may well be asked, what were they?

The contention that these duties were not official duties, within the meaning of section 2243 of the Revised Statutes, rests solely on the assumption that the duties of a receiver of public moneys do not and cannot begin until the land office for which he is appointed has been opened for the sale of public lands, and he has entered upon the business of the sale and location of such lands and the receiving of public moneys therefor. Such an assumption is merely an attempt to engraft upon the Statute a meaning unwarranted by its letter and spirit—an effort to frame its provisions anew to fit the peculiar theory advanced by counsel for appellants.

The fees and commissions earned and received by the appellee from September 1, 1890, when the land office at Oklahoma City was opened for the sale of public lands, to June 30, 1891, the close of the fiscal

year, were largely in excess of his *pro rata* compensation for salary, fees and commissions, at the maximum rate of $3,000 per annum, from July 18, 1890, the date on which he entered upon the discharge of his duties, to June 30, 1891 (rec. p. 4)..

It follows that upon the plain and reasonable construction of the law, as it stands upon the statute book, the appellee is entitled to the *pro rata* of the maximum compensation from July 18, 1890, to September 1, 1890, for which the court below gave judgment in his favor in the sum of $366.

Even if it be conceded that there is obscurity in section 2243, Revised Statutes, as to the duties of a receiver of public moneys, upon which he must enter before his compensation begins, the doubt should be resolved in favor of the appellee under the decision in *United States* v. *Morse*, 3 Story, 87, adopted and approved by the court of claims in *Moore* v. *United States*, 4 C. Cls. R. 141, as follows:

"In the construction of statutes which fix the compensation of public officers, the rule of interpretation as held by the courts is, that when the words of such a statute are loose and obscure, and admit of two meanings, they should be construed in favor of the officer."

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